

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Exigent Landscaping, LLC,
Debtor.

Case No. 23-46912-TJT
Chapter 7
Hon. Thomas J. Tucker

/

**MOTION FOR ORDER AUTHORIZING TRUSTEE
TO AUCTION ASSETS FREE AND CLEAR OF LIENS,
CLAIMS, AND INTERESTS WITH ALL LIENS, CLAIMS,
AND INTERESTS ATTACHING TO THE PROCEEDS OF SALE**

Jurisdiction

1. Exigent Landscaping, LLC d/b/a Exigent Design and Build (“Debtor”) filed a petition for relief under Chapter 11 of the U.S. Bankruptcy Code on August 7, 2023.
2. The Chapter 11 case was converted to a Chapter 7 on February 12, 2024 (Docket #152).
3. Chapter 7 Trustee Mark H. Shapiro (“Trustee”) seeks to sell assets as permitted by 11 U.S.C. § 363 and in accordance with Fed. R. Bankr. P. 6004.
4. The Court has jurisdiction over this Chapter 7 bankruptcy case. *See* 28 U.S.C. § 1334. The case, and all related proceedings and contested matters, have been referred to this bankruptcy court for determination. *See* 28 U.S.C. §§ 157(a) and 157(b); and LR 83.50 (E.D. Mich.).

5. This is a core proceeding over which this Court has authority to enter a final order. *See 28 U.S.C. § 157(b)(2)(A)* (matters concerning administration of the estate) and (N) (orders approving the sale of property).

Background

6. The Trustee intends to sell assets of the Debtor, consisting primarily of the following:

Property Description

Raw materials (gravel, sand, pavers)
Misc. office furniture, incl conference table, 4 desks, 12 chairs
Office equipment, incl computers, printers, TV
(2) 20" Trailer, 18" Trailer, 16" Trailer, 10" Trailer
GMC 4500 Truck
3 Trailers
2 Vacuum Paver Lifters
Topsoil Screener
2 Toro Dingo
Large Tamper
5 Small Tampers
5 Stihl saws
Rebar cutter and tier
2 Compressors
Misc. pool equipment and supplies
Misc. hand tools
Mud Buggy
Cat 308e2 Excavator - subject to \$15,000 lien of CAT

(“Assets”).

7. Except for the GMC 4500 Truck, the Assets are subject to the perfected security interest of the Small Business Administration (“SBA”).

8. The Caterpillar 308e2 Excavator, SN FJX01882 (“Excavator”) is subject to a security interest in favor of Caterpillar Financial Services Corp. (“CAT Financial”). The Trustee is informed that there is equity in the Excavator beyond the balance owed to CAT Financial on the Excavator. Accordingly, the Excavator will be included in the sale and sold only if the price exceeds the balance owed to CAT Financial on the Excavator. Any excess proceeds will be subject to the security interest of the SBA.

9. The SBA has agreed to permit the Trustee to sell its collateral subject to a 33% surcharge.

10. The Trustee retained the services of Miedema Auctioneering, Inc. d/b/a Repocast (“Repocast”) as auctioneer who has proposed to auction the Assets via an online public auction on April 2, 2024.

Authority to Sell Assets – 11 U.S.C. § 363(b)

11. The Assets are property of the bankruptcy estate that the Trustee may use, sell, or lease. *See 11 U.S.C. §§ 541(a) and 363(b).*

12. A trustee “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b).

13. All sales not in the ordinary course of business may be by private sale or by public auction. Fed. R. Bankr. P. 6004(f).

14. The Sixth Circuit follows the sound business purpose test in considering a sale of a debtor's assets outside the ordinary course of business. *See Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 388 (6th Cir. 1986); *In re Woodberry*, 629 B.R. 239, 246 (Bankr. E.D. Mich. 2021).

15. Among the factors commonly considered by courts in determining whether a sale meets the sound business purpose test are: (1) whether adequate and reasonable notice of the sale was provided to interested parties; (2) whether the sale has been proposed in good faith; and (3) whether the purchase price is fair and reasonable. *In re Woodberry* at 246 (citations omitted). No one factor is determinative. *Id.* (citations omitted).

16. In this case, the Trustee believes that a sound business justification exists for the sale because 1) the Assets must be liquidated to provide funds to the bankruptcy estate for distribution to creditors; 2) an auction will allow the Trustee to reach the greatest number of potential buyers through focused advertising; 3) the auction process tends to increase prices with the motivation and excitement of competitive bidding; 4) an auction is more efficient and less expensive than negotiating with private buyers to sell assets in a piecemeal fashion; and 5) notice of the sale will be served on all interested parties as required by B.R. 2002 and L.B.R. 9014.

Authority to Sell Free & Clear of Liens – 11 U.S.C. § 363(f)

17. A trustee may sell property of the estate free and clear of all liens, claims, and interests asserted in or against the property being sold if—

- such a sale is permitted under applicable nonbankruptcy law;
- the party asserting the interest consents to the sale;
- the property interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- the property interest is subject to a bona fide dispute; or
- the party asserting the property interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest.

11 U.S.C. § 363(f).

18. The Court may authorize a sale free and clear of all property interests, so long as one of the requirements of § 363(f) is satisfied. *See In re Elliot*, 94 B.R. 343, 345 (D. Pa. 1988).

19. In this case, the Small Business Administration has consented to the sale.

20. To the extent that any property interests are asserted against the Assets, those property interests will attach to the net proceeds of sale with the same validity and priority as they attach to the estate's interest in the Assets.

Additional Terms

21. The Trustee reserves the right to: a.) impose additional terms and conditions on the sale; b.) adjourn the auction; and c.) withdraw the Assets from the auction.

22. The Assets will be sold “as is” and “where is” without representation or warranties, whether expressed or implied, including, but not limited to, any warranties of merchantability, fitness for particular purpose, or habitability.

23. The 14-day stay provided for in Bankruptcy Rule 6004(h) shall not be in effect with respect to the sale, and the proposed order will be effective and enforceable immediately upon entry.

Request for Relief

The Trustee requests that this Court enter an order authorizing the proposed sale and grant such further relief as this Court deems appropriate.

Steinberg Shapiro & Clark

/s/ Tracy M. Clark (P60262)
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Date: March 6, 2024

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Exigent Landscaping, LLC,
Debtor.

Case No. 23-46912-TJT
Chapter 7
Hon. Thomas J. Tucker

/

**ORDER AUTHORIZING TRUSTEE TO AUCTION
ASSETS FREE AND CLEAR OF LIENS, CLAIMS,
AND INTERESTS WITH ALL LIENS, CLAIMS, AND
INTERESTS ATTACHING TO THE PROCEEDS OF SALE**

This matter is before the Court on the Motion for Order Authorizing Trustee to Auction Assets Free and Clear of Liens, Claims, and Interests with all Liens, Claims, and Interests Attaching to the Proceeds of Sale (“Motion”; Docket #____). In the Motion, the Trustee seeks to sell assets of the Debtor, consisting primarily of the following:

Property Description

Raw materials (gravel, sand, pavers)
Misc. office furniture, incl conference table, 4 desks, 12 chairs
Office equipment, incl computers, printers, TV
(2) 20" Trailer, 18" Trailer, 16" Trailer, 10" Trailer
GMC 4500 Truck
3 Trailers
2 Vacuum Paver Lifters
Topsoil Screener
2 Toro Dingo
Large Tamper
5 Small Tampers
5 Stihl saws
Rebar cutter and tier

2 Compressors
Misc. pool equipment and supplies
Misc. hand tools
Mud Buggy
Cat 308e2 Excavator - subject to \$15,000 lien of CAT

(“Assets”). All parties in interest were served with notice of the Motion, and no objections were timely filed. The Court finds good cause to enter this order.

IT IS ORDERED as follows:

- A. The Motion is granted in its entirety.
- B. Chapter 7 Trustee Mark H. Shapiro is authorized to sell the Assets via an online auction to be held April 2, 2024.
- C. The Assets will be sold “as is, where is” without representation or warranty, expressed or implied, of any kind, nature or description, including without limitation, any warranty of title or of merchantability, usability, or of fitness for any particular purpose.
- D. The Trustee may: a.) impose additional terms and conditions on the sale; b.) adjourn the auction; and c.) withdraw the Assets from the auction.
- E. The Assets will be sold free and clear of all liens, claims, and encumbrances, with all such liens, claims, and encumbrances attaching to the net proceeds of sale to the same extent and having the same validity, priority, and enforceability as such interests had with respect to the assets immediately before the sale. Any issue regarding the extent, validity, priority, and/or enforceability of

any liens, claims, or encumbrances against the sale proceeds will be determined by this Court at a later date.

F. The Trustee may execute all documents and agreements and perform such acts as may be necessary and appropriate to implement, effectuate, and consummate the sale.

G. All federal, state, and local governmental agencies and departments are ordered and directed to accept all filings necessary and appropriate to consummate the transactions contemplated by this order.

H. The 14-day stay provided for in Bankruptcy Rule 6004(h) shall not be in effect with respect to the sale, and this order is effective and enforceable immediately upon entry.

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Exigent Landscaping, LLC, xx-xxx5176
dba Exigent Design and Build
13246 23 Mile Road
Shelby Township, MI 48315

Case No. 23-46912-TJT
Chapter 7
Hon. Thomas J. Tucker

Debtor.

/

**NOTICE OF MOTION FOR ORDER AUTHORIZING TRUSTEE TO
AUCTION ASSETS FREE AND CLEAR OF LIENS, CLAIMS, AND
INTERESTS WITH ALL LIENS, CLAIMS, AND INTERESTS
ATTACHING TO THE PROCEEDS OF SALE**

Chapter 7 Trustee Mark H. Shapiro filed a Motion for Order Authorizing Trustee to Auction Assets Free and Clear of Liens, Claims, and Interests with all Liens, Claims, and Interests Attaching to the Proceeds of Sale (“Motion”). Pursuant to the Motion, the Trustee intends to sell assets of the Debtor, consisting primarily of the following:

Property Description

Raw materials (gravel, sand, pavers)
Misc. office furniture, incl conference table, 4 desks, 12 chairs
Office equipment, incl computers, printers, TV
(2) 20" Trailer, 18" Trailer, 16" Trailer, 10" Trailer
GMC 4500 Truck
3 Trailers
2 Vacuum Paver Lifters
Topsoil Screener
2 Toro Dingo
Large Tamper
5 Small Tampers
5 Stihl saws
Rebar cutter and tier
2 Compressors
Misc. pool equipment and supplies
Misc. hand tools

Mud Buggy
Cat 308e2 Excavator - subject to \$15,000 lien of CAT

(“Assets”). The Assets will be sold through an online auction to be conducted by Miedema Auctioneering, Inc. d/b/a Repocast on April 2, 2024.

The Assets will be sold free and clear of liens, claims, and interests. Further details are included in the Motion. A copy of the Motion may be obtained from the Trustee or the bankruptcy court. Additional information regarding the sale may be obtained from the auctioneer at (866) 550-REPO or by contacting the Trustee’s office at (248) 352-4700.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the Court to grant the Motion, or if you want the Court to consider your views on the Motion, then within 14 days from the date this notice is served you or your attorney must:

File with the Court a written objection or request for hearing, explaining your position at:¹

U.S. Bankruptcy Court
211 West Fort Street
Detroit, Michigan 48226

If you mail your objection or request for hearing to the Court for filing, you must mail it early enough to the Court will **receive** it before the 14-day period expires. All attorneys are required to file pleadings electronically.

You must also send a copy to:

Tracy M. Clark, Esq.
Steinberg Shapiro & Clark
25925 Telegraph Rd., Suite 203
Southfield, Michigan 48033

¹Objection or request for hearing must comply with Fed. R. Civ. P. 8(b), (c), and (e).

If an objection or request for hearing is timely filed, the clerk will schedule a hearing on the Motion, and you will be served with a notice of the date, time, and location of the hearing.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an order granting that relief.

Steinberg Shapiro & Clark

/s/ Tracy M. Clark (P60262)
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Date: March 6, 2024

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Exigent Landscaping, LLC,
Debtor.

Case No. 23-46912-TJT
Chapter 7
Hon. Thomas J. Tucker

/

CERTIFICATE OF SERVICE

I certify that on March 6, 2024, I served copies as follows:

Document Served: Notice of Trustee's Motion for Order Authorizing Trustee to Auction Assets Free and Clear of Liens, Claims, and Interests with all Liens, Claims, and Interests Attaching to the Proceeds of Sale

Served Upon: All non-ECF parties listed on attached Official Court Matrix

Service Method: First Class Mail

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Label Matrix for local noticing
0645-2
Case 23-46912-tjt
Eastern District of Michigan
Detroit
Wed Mar 6 13:14:40 EST 2024

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Dearborn Heights, MI 48127-4903

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Chicago, IL 60673-1241

Stafford Landscaping LLC
PO Box 736
Memphis, MI 48041-0736

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Department of Attorney General
Cadillac Place
3030 West Grand Boulevard
Detroit, MI 48202-6030

State of Michigan
Department of Treasury
Collections Division
Treasury Building
Lansing, MI 48922-0001

State of Michigan
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P.O. Box 77437
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c/o Norman Orr
201 West Big Beaver
Suite 600

Tommissns Tounsel
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U.S. Small Business Administration
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Birmingham, AL 35203

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Birmingham, AL 35203

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Valley Stream, NY 11580-5403

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Upstart Loan Operations
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Dickinson Wright PLLC
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503 Highway 2 West
Devils Lake, ND 58301-2938

Western Equipment Finance, Inc.
P.O. Box 640
Devils Lake, ND 58301-0640

Wiegands Farm
32800 31 Mile Rd
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ally
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Minneapolis, MN 55438-0902

c/o CRF Solutions
PO Box 1389
Simi Valley, CA 93062-1389

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4) .

AmeriCredit Financial Services, Inc.
P.O. Box 183853
Arlington, TX 76096

(d)AmeriCredit Financial Services, Inc.
dba GM Financial
P O Box 183853
Arlington, TX 76096

Bill
6220 America Center Dr. Suite 100
San Jose, CA 95002

Citizens Bank, N.A.
One Citizens Plaza
Providence, RI 02903

Internal Revenue Service
Centralized Insolvency Operations
PO Box 21126
Philadelphia, PA 19114

Kabbage
730 Peachtree St NE, Suite 1100
Atlanta, GA 30308

U.S. Bank
800 Nicollet Mall
Minneapolis, MN 55402

(d)U.S. Bank National Association
Bankruptcy Department
PO Box 108
Saint Louis MO 63166-0108

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)23 Mile Storage, LLC

(u)24 Capital
1545 Route 202
Suite 101
NY 10907

(u)Ally Bank

(u)Ayham Ashkar 47681 Manorwood Drive Northvi

(u)EBF Holdings LLC

(u)Ernest M. Hassan III

(u)Amanda Pisarski

(u)SCP Distributors, LLC

(u)Mohamed Saad

(u)Angela Serrano

(d)Mark H. Shapiro
25925 Telegraph Rd.
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Southfield, MI 48033-2527

(u)Andrew R. Vara

End of Label Matrix

Mailable recipients 166

Bypassed recipients 12

Total 178